

Senator Helen Polley  
Chair  
Senate Standing Committee on Finance and Public Administration  
PO Box 6021  
CANBERRA ACT 2600

Enquiries: Siobhan Jenner  
Tel: (02) 80191603  
Our ref: A11/0060  
Your ref:

Attn: Christine McDonald  
Secretary  
Fpa.sen@aph.gov.au

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Dear Senator Polley

**Re: Inquiry into Exposure Drafts of the Australian Privacy Amendment Legislation Credit Reporting**

The Office of the Privacy Commissioner NSW is pleased to be able to make this submission to the Senate Standing Committee on Finance and Public Administration regarding the Inquiry into Exposure Drafts of the Australian Privacy Amendment Legislation Credit Reporting. The NSW Privacy Commissioner is the holder of an independent statutory office, created by Parliament under the *Privacy and Personal Information Protection Act 1998* (the PPIP Act). The functions of the Privacy Commissioner include the power to make public statements about matters relating to the privacy of individuals generally and making recommendations about any matter that concerns the need for, or the desirability of, legislative, administrative or other action in the interest of the privacy of individuals.

Both the PPIP Act and the *Health Records & Information Privacy Act* (HRIP Act) apply to NSW public sector agencies and to organisations which deal with health information respectively. While neither the provision of credit or the reporting of the provision of credit are matters governed by these laws I have decided to provide this submission for the reason that in my view the changes to the definition of credit information outlined in the Companion Guide and Exposure Drafts will be likely to have a significant impact on the privacy of individuals. The Exposure Draft proposes that the definition of credit information be expanded to include the type of each active credit account, date of opening and closure of account, account credit limits and credit repayment history.

I note that there are already significant systems, powers and obligations in place concerning responsible lending and credit provision.

While it is arguable that the collection of positive credit information may improve due diligence regarding the decision to provide credit to an individual, I am not convinced that the further and better particulars about such matters as an individual's credit repayment history would make the provision or the reporting of the provision of credit any more responsible. In my view the benefits to credit providers in terms of responsible lending are outweighed by the risks to the individual from the significantly extensive and intrusive collection of information about that individual.

If it transpires that the definition of credit information does include these extra data sets, I suggest that it be accompanied by an increase in the level of scrutiny by the Office of the Australian Information Commissioner (with which the Federal Privacy Commissioner is located). Section 28A of the *Privacy Act 1988* (Cth) currently allows the Federal Privacy Commissioner to 'conduct audits' of credit information files and credit reports', to 'monitor the security and accuracy of personal information contained in credit files' and to 'examine the records of credit reporting agencies and credit providers. The Federal Privacy Commissioner's website indicates that there have been no audits of credit providers or credit reporting agencies to date. Oversight of the conduct of credit providers and credit reporting agencies in terms of their obligations under the Privacy Act appears to have been limited to the investigation of complaints.

Comprehensive credit reporting will involve a vast increase in the amount and type of information which may be collected. This significantly heightens the risk that credit information (positive and negative) may be improperly collected, not stored securely or misused. To meet this risk I suggest that Parliament should consider including a provision which requires that Privacy Commissioner conduct one regular (at least yearly) audit of a randomly selected credit reporting agency and a credit provider in Australia. This will serve as a conscious-raising exercise for credit providers and credit reporting agencies, and it will go some way to balancing the potentially invasive effect of comprehensive credit reporting by increasing accountability, transparency and, hopefully compliance with the credit reporting provisions.

Yours sincerely

John McAteer  
**Acting Privacy Commissioner**  
**Information and Privacy Commission**